

## Update: Juvenile Justice Benchbook (Revised Edition)

### CHAPTER 25

### Recordkeeping & Reporting Requirements

#### 25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

##### A. Who Must Register?

##### “Convicted.”

On page 521, replace the second bullet with the following text:

- Being assigned to youthful trainee status pursuant to MCL 762.11-762.15 before October 1, 2004. MCL 28.722(a)(ii)(A).\*
- Being assigned to youthful trainee status pursuant to MCL 762.11-762.15 on or after October 1, 2004, if the individual’s status of youthful trainee is revoked and an adjudication of guilt is entered. MCL 28.722(a)(ii)(B).

**Note:** Effective October 1, 2004, 2004 PA 239 amended the Holmes Youthful Trainee Act to prevent individuals charged with certain sex offenses from being assigned to youthful trainee status.

Youthful trainee status is not available for an individual who pleads guilty to a violation, an attempted violation, or conspiracy to violate any of the following statutes:\*

- MCL 750.520b, first-degree criminal sexual conduct;
- MCL 750.520c, second-degree criminal sexual conduct;
- MCL 750.520d, third-degree criminal sexual conduct (except under 750.520d(1)(a), which requires that the victim be at least 13 years of age but under 16 years of age);

\*See 2004 PA 240, effective October 1, 2004.

\*This listing only contains sexual conduct crimes; it is not the complete list of crimes contained in MCL 762.11. For a complete listing, see 2004 PA 239.

- MCL 750.520e, fourth-degree criminal sexual conduct (except under MCL 750.520e(1)(a), which requires that the victim be at least 13 years of age but under 16 years of age, and that the actor be five or more years older than the victim);
- MCL 750.520g, assault with the intent to commit a violation of one of the above enumerated offenses. MCL 762.11(2)(d)–(e).

MCL 762.11(3) also prohibits a court from assigning an individual to youthful trainee status if any of the following apply:

“(a) The individual was previously convicted of or adjudicated for a listed offense for which registration is required under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732.

“(b) If the individual is charged with a listed offense for which registration is required under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732, the individual fails to carry the burden of proving by clear and convincing evidence that he or she is not likely to engage in further listed offenses.

“(c) The court determines that the offense involved any of the following:

(i) A factor set forth in section 520b(1)(a) to (h) of the Michigan penal code, 1931 PA 328, MCL 750.520b.

(ii) A factor set forth in section 520c(1)(a) to (l) of the Michigan penal code, 1931 PA 328, MCL 750.520c.

(iii) A factor set forth in section 520d(1)(b) to (e) of the Michigan penal code, 1931 PA 328, MCL 750.520d.

(iv) A factor set forth in section 520e(1)(b) to (f) of the Michigan penal code, 1931 PA 328, MCL 750.520e.”

2004 PA 240 allows certain individuals assigned to youthful trainee status before October 1, 2004, to petition the court for a reduction in the period of time during which they must comply with SORA. See new subsection 25.18(I), below, for more information.

## **25.18 Recordkeeping Requirements of the Sex Offenders Registration Act**

### **B. Initial Registration and Duties**

#### **Individuals convicted in Michigan.**

On page 525, in the first paragraph, replace the first sentence with the following text:

The probation officer or the court must provide the registration form, explain the duty to register and to pay a registration fee,\* to verify his or her address, and to provide notice of address changes, and accept the completed registration for processing under MCL 28.726. MCL 28.724(5), as amended by 2004 PA 240 and 2004 PA 237.

\*See subsection 25.18(D) for information on the registration fee.

## 25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

### D. The “Registration”

After the last paragraph on page 529, insert the following text:

**Registration fee.** In addition to remitting the verification form, the individual is responsible for submitting a \$35.00 original registration fee to the State Police unless excused from the fee under MCL 28.725b. MCL 28.727(1). MCL 28.725b(3) provides that the registration fee may be temporarily waived if the individual is indigent.

MCL 28.729(4) states:

“An individual who willfully refuses or fails to pay the registration fee prescribed in [MCL 28.725a\*] or [MCL 28.727(1)] within 90 days of the date the individual reports under [MCL 28.724a] or [MCL 28.725a] is guilty of a misdemeanor punishable by imprisonment for not more than 90 days.”

\*As amended by 2004 PA 237 and 2004 PA 240.

## 25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

### E. Length of Registration Period

#### **Lifetime registration.**

After the “**Note**” following the last bullet near the bottom of page 530, insert the following text:

Certain individuals may be excused from lifetime registration if they file a petition pursuant to MCL 28.728c and the petition is granted. For more information on filing a petition pursuant to MCL 28.728c, see subsection 25.18(I), below.

#### **10- or 25-year registration.**

On page 531, immediately before subsection (F), insert the following text:

Certain individuals may be excused from the 25-year or 10-year registration requirements if they file a petition pursuant to MCL 28.728c and the petition is granted. For more information on filing a petition pursuant to MCL 28.728c, see subsection 25.18(I), below.

### F. Yearly or Quarterly Verification of Domicile or Residence

On page 531, after the bulleted list, insert the following text:

The continued reporting requirements do not apply to “an individual convicted as a juvenile of committing an offense described in [MCL 28.728c(15)(a) or (b)] committed by the individual when he or she was less than 17 years of age, except that the individual shall report a change in his or her residence within this state or to another state as provided in this section within 10 days after the change of residence is made. If the individual fails to file a petition under [MCL 28.728(c)] before he or she becomes 18 years of age, or if his or her petition is denied by the court, the individual shall report as otherwise required under this section.” MCL 28.725a(5), as amended by 2004 PA 240.\* See subsection 25.18(I) for an listing of the offenses described in MCL 28.728c(15)(a) and (b) and for more information on petitions filed pursuant to MCL 28.728c.

On page 531, insert the following text at the end of the first full paragraph after the bulleted list:

An individual who reports pursuant to MCL 28.725a(3) or (4) and who has not already paid the sex offender registration fee must pay a \$35.00 sex offender registration fee. The individual must only be required to pay the fee once. MCL 28.725a(7), as amended by 2004 PA 237.\*

\*Effective  
October 1,  
2004.

\*Effective  
October 16,  
2004.

## 25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

### G. Public Notification and the Computerized Databases

Near the middle of page 534, add the following text to the bulleted list:

- ♦ Beginning May 1, 2005, a photograph of each individual. Photographs will be obtained from the Secretary of State. MCL 28.728(4)(c) as amended by 2004 PA 240.\*

\*Effective  
October 1,  
2004.

### H. Juvenile Offenders Exempt From Public Notification Requirements

On page 535, replace the text of subsection (H) with the following text:

Although juvenile offenders not tried as adults are subject to the same registration requirements as adult offenders, they are generally exempted from the SORA's public notification requirements and from having their registrations placed in the State Police's public database. See MCL 28.728(2) and *In re Ayres*, 239 Mich App 8, 12 (1999). However, except as set forth in subsection (I), below, this exemption does not apply to juvenile dispositions for either first-degree criminal sexual conduct, MCL 750.520b, or second-degree criminal sexual conduct, MCL 750.520c, after the juvenile offender becomes 18 years of age. Nor does this exemption apply to juvenile offenders convicted under "automatic" or "traditional" waivers, or by "case designation" methods. MCL 28.728(3) provides in pertinent part:

"(3) The database described in subsection (2) shall not include the following individuals:

"(a) An individual registered solely because he or she had 1 or more dispositions for a listed offense entered under section 18 of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, in a case that was not designated as a case in which the individual was to be tried in the same manner as an adult under section 2d of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d. Except as provided in subdivision (b), the exclusion for juvenile dispositions does not apply to a disposition for a violation of section 520b or 520c of the Michigan penal code, 1931 PA 328, MCL 750.520b and 750.520c, after the individual becomes 18 years of age.

"(b) An individual who is exempt under section 8d from that database."

## I. Petition for Exemption From Registration or Alternate Registration Period

On page 535, insert the following new subsection (I) and redesignate existing subsections (I)-(L) accordingly.

Juveniles convicted of criminal sexual conduct offenses listed below may petition the court for exemption from the registration requirements of SORA. In addition, individuals who successfully complete youthful trainee status may petition the court to reduce the period of time during which they are subject to the registration and reporting requirements of SORA.\*

\*2004 PA 240, effective October 1, 2004.

### 1. Who May Petition the Court

**Convictions before October 1, 2004.** MCL 28.728c(1) provides that the following individuals, if convicted before October 1, 2004, may petition the court to seek registration under MCL 28.728d(1):

- ♦ An individual convicted as a juvenile of committing, attempting to commit, or conspiring to commit a violation of MCL 750.520b(1)(a), MCL 750.520c(1)(a), or MCL 750.520d(1)(a), if either of the following applies:
  - The individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim; or
  - The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than three years older than the victim. MCL 28.728c(15)(a)(i)-(ii).
- ♦ An individual who is charged with committing, attempting to commit, or conspiring to commit a violation of MCL 750.520b(1)(a), MCL 750.520c(1)(a), or MCL 750.520d(1)(a), and is convicted as a juvenile of violating, attempting to violate, or conspiring to violate MCL 750.520e or MCL 750.520g, if either of the following applies:
  - The individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim.
  - The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than three years older than the victim. MCL 28.728c(15)(b)(i)-(ii).
- ♦ An individual who has successfully completed his or her probationary period under the Holmes Youthful Trainee Act, MCL 762.11-762.15, for committing a listed offense, and has been discharged from youthful trainee status.\* MCL 28.728c(15)(c).

\*For more information on youthful trainee status, see subsection 25.18(A), above.

\*A court may hold a petition in abeyance if the petitioner has a pending felony charge. See subsection 25.18(1)(4), below.

MCL 28.728c(4) provides that a petition under MCL 28.728c(1) must be “filed before October 1, 2007 or within 3 years after the individual is discharged from the jurisdiction of the juvenile court or, if the individual was assigned to youthful trainee status, within 3 years after he or she has successfully completed youthful trainee status, whichever is later, and, except as otherwise provided in this subsection,\* the court shall not consider a petition filed by the individual after that date.”

**Convictions on or after October 1, 2004.** MCL 28.728c(2) provides that the following individuals, if convicted on or after October 1, 2004, may petition the court to seek registration under MCL 28.728d(1):

- ♦ An individual convicted as a juvenile of committing, attempting to commit, or conspiring to commit a violation of MCL 750.520b(1)(a), MCL 750.520c(1)(a), or MCL 750.520d(1)(a), if either of the following applies:
  - The individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim; or
  - The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than three years older than the victim. MCL 28.728c(15)(a)(i)-(ii).
- ♦ An individual who is charged with committing, attempting to commit, or conspiring to commit a violation of MCL 750.520b(1)(a), MCL 750.520c(1)(a), or MCL 750.520d(1)(a), and is convicted as a juvenile of violating, attempting to violate, or conspiring to violate MCL 750.520e or MCL 750.520g, if either of the following applies:
  - The individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim.
  - The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than three years older than the victim. MCL 28.728c(15)(b)(i)-(ii).

MCL 28.728c(4) provides that a petition under MCL 28.728c(2) “shall not be filed before the individual’s seventeenth birthday or after the individual’s twentieth birthday.”

## 2. Filing the Petition

A petition filed under MCL 28.728c must be filed in the court where the juvenile was convicted of the listed offense. MCL 28.728c(4). A petition shall not be filed under MCL 28.728c if a petition was previously filed and was denied by the court after a hearing. MCL 28.728c(4). At least 30 days prior to holding a hearing on the petition, a copy of the petition must also be filed with



the prosecuting attorney's office that prosecuted the case against the individual. MCL 28.728c(7).

### 3. Contents of the Petition

MCL 28.728c(5) requires that the petition be made under oath and contain all of the following:

- ◆ The name and address of the petitioner.
- ◆ A statement identifying the offense for which registration pursuant to MCL 28.728d is being requested.
- ◆ A statement of whether the individual was previously convicted of a listed offense for which registration is required under SORA.
- ◆ A statement specifically stating that the individual is not disqualified under MCL 28.728c(14) from filing a petition.\* MCL 28.728c(5)(a)-(d).

MCL 28.728c(6) states:

“An individual who knowingly makes a false statement in a petition filed under this section is guilty of perjury as proscribed under . . . MCL 750.423.”

### 4. Hearing on the Petition

If an individual properly files a petition, the court must conduct a hearing on the petition. MCL 28.728c(10).

If the individual is charged in Michigan or another state with committing, attempting to commit, or conspiring to commit a felony other than the one described in the petition or an offense that if committed by an adult would be a felony, the court may hold a petition in abeyance until final disposition of the charge. MCL 28.728c(4). If the court holds the petition in abeyance, the three-year limitation period for filing a petition prescribed in MCL 28.728c(4)\* begins to run when the abeyance has ended. MCL 28.728c(4).

The prosecuting attorney may appear and participate in all proceedings regarding the petition and may seek appellate review of any decision on the petition. MCL 28.728c(7). If the prosecuting attorney knows the name of the victim, he or she must provide the victim with written notice that a petition has been filed and provide the victim with a copy of the petition. The notice must be sent by first-class mail to the victim's last known address and include a statement of the victim's rights under MCL 28.728c(11). MCL 28.728c(8).

The victim has the right to attend all proceedings under MCL 28.728c and to make a written or oral statement to the court before any decision regarding the

\*See sub-  
subsection  
25.18(1)(5),  
below, for more  
information on  
disqualification  
under MCL  
28.728c(14).

\*See sub-  
subsection  
25.18(1)(1),  
above, for more  
information on  
MCL  
28.728c(4).

petition is made. MCL 28.728c(11). However, a victim must not be *required* to appear at any proceeding against his or her will. *Id.*

MCL 28.728c(12) requires the court to consider all of the following in determining whether to grant the petition:

“(a) The individual’s age and level of maturity at the time of the offense.

“(b) The victim’s age and level of maturity at the time of the offense.

“(c) The nature of the offense.

“(d) The severity of the offense.

“(e) The individual’s prior juvenile or criminal history.

“(f) The individual’s likelihood to commit further listed offenses.

“(g) Any impact statement submitted by the victim under the crime victim’s rights act, 1985 PA 87, MCL 780.751 to 780.834, or under this section.

“(h) Any other information considered relevant by the court.”

## 5. Denying or Granting the Petition

Pursuant to MCL 28.728c(14), the court is prohibited from granting a petition if any of the following apply:

- ♦ The petitioner was previously convicted of a listed offense for which registration is required under SORA. MCL 28.728c(14)(a).
- ♦ The petitioner fails to prove by clear and convincing evidence that he or she is not likely to commit further listed offenses. MCL 28.728c(14)(b).
- ♦ The court determines that the offense involved any of the following:
  - One of the factors set forth in MCL 750.520b(1)(b) to (h);\*
  - One of the factors set forth in MCL 750.520c(1)(b) to (l);
  - One of the factors set forth in MCL 750.520d(1)(b) to (e); or
  - One of the factors set forth in MCL 750.520e(1)(b) to (f). MCL 28.728c(14)(c)(i)-(iv).
- ♦ The petitioner is charged in Michigan or elsewhere with committing, attempting to commit, or conspiring to commit a felony, other than the

\*See Smith, *Sexual Assault Benchbook* (MJJ, 2002), Sections 2.2(A)(1), 2.2(B)(1), 2.3(A)(1), and 2.3(B)(1) for a listing of the factors described here.

one described in the petition, or an offense that if committed by an adult would be a felony. MCL 28.728c(14)(d).

- ♦ The petitioner was sentenced for the offense as an adult. However, this does not apply to an individual who has completed probation and was discharged under the Holmes Youthful Trainee Act. MCL 28.728c(14)(e).

“If the court determines that the individual meets the criteria for registration under [MCL 28.728d], the court may order the individual to register under this act as provided in that section.” MCL 28.728c(13).\*

\*See sub-  
subsection  
25.18(1)(7),  
below.

If the court grants the petition, the court must promptly provide a copy of the order to the State Police and to the petitioner. MCL 28.728d(3).

If the State Police are provided with an order granting the petition for a petitioner described in MCL 28.728c(15)(a) or (b),\* the State Police shall not enter the individual’s registration on the public registry or, if the person is already registered, the State Police must promptly remove an individual’s registration from the public registry. MCL 28.728d(3). The State Police must promptly remove an individual’s registration from the nonpublic registry upon expiration of the applicable registration period described in MCL 28.728d(1) or (2). MCL 28.728d(3).

\*See sub-  
subsection  
25.18(1)(1),  
above, for  
information  
concerning  
these  
petitioners.

## 6. Registration While the Petition Is Pending

MCL 28.728c(9) states:

“(9) If an individual petitions the court under subsection (1) or (2) for an offense described in subsection (15)(a) or (b) and the individual is not on the [public] database maintained under [MCL 28.728(2)] at the time the petition is filed, the court may order the department not to place the individual on that database during the period in which the court is considering whether to grant the petition as follows:

“(a) Except as provided in subdivision (b), for a period of 30 days after the date the order is issued or as provided by the court, whichever occurs first.

“(b) If jurisdiction is continued by the court past the individual’s seventeenth birthday, during the period in which jurisdiction is continued. The court shall notify the department of the order as required under [MCL 28.728d].”

If the court orders the petitioner to register under MCL 28.728d pending the court’s determination on the petition, the court must promptly provide a copy of that order to the State Police and to the petitioner. MCL 28.728d(2).

\*See sub-  
subsection  
25.18(I)(1),  
above, for a  
description of  
these  
petitioners.

If the State Police are provided with such an order for a petitioner described in MCL 28.728c(15)(a) or (b),\* then the State Police must not enter the petitioner's registration into the public registry until ordered by the court to do so, or until the expiration of the order, whichever occurs first. MCL 28.728d(2).

## **7. Registration Pursuant to MCL 28.728d**

Pursuant to MCL 28.728d(1), if the court grants a petition filed pursuant to MCL 28.728c, the petitioner must register as a sex offender as follows:

- ♦ A juvenile shall register until the petition is granted but is not subject to the requirements of the public registry. MCL 28.728d(1)(a).
- ♦ A youthful trainee who successfully completes his or her probationary period shall register for a period of ten years after the date that he or she initially registered, or if the petitioner was in a state correctional facility, for ten years after he or she is released from that facility, whichever is greater. The petitioner is subject to the requirements of the public registry during that registration period. MCL 28.728d(1)(b).

## 25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

### L. Registration Violation Enforcement

#### Penalties.

On page 538, replace the text of the second bullet with the following text:

An individual who fails to comply with MCL 28.725a (yearly and quarterly verification), other than the payment of the registration fee, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a maximum fine of \$1,000.00, or both. MCL 28.729(2).\*

\*2004 PA 237,  
effective  
October 16,  
2004.

On page 538, before the paragraph beginning “**Additional mandatory penalties,**” insert the following new bullet:

- Failure to Pay the Registration Fee

An individual who willfully refuses or fails to pay the registration fee prescribed in MCL 28.725a\* or MCL 28.727(1) within 90 days of reporting is guilty of a misdemeanor punishable by imprisonment for not more than 90 days. MCL 28.729(4), as amended by 2004 PA 237.

\*2004 PA 237  
and 2004 PA  
240.

## Update: Juvenile Justice Benchbook (Revised Edition)

### CHAPTER 7

#### Pretrial Proceedings in Delinquency Cases

##### 7.6 Selected Search and Seizure Issues

###### Strip and body cavity searches.

Near the middle of page 159, immediately before Section 7.7, insert the following text:

In *Reynolds v City of Anchorage*, \_\_\_ F3d \_\_\_, \_\_\_ (CA 6, 2004), the U.S. Court of Appeals for the Sixth Circuit, quoting *Bell v Wolfish*, 441 US 520, 559 (1979), held:

“[T]he determination of the reasonableness under the Fourth Amendment of a strip search of a juvenile delinquent in a detention facility requires us to balance ‘the need for the particular search against the invasion of personal rights that the search entails.’ *Wolfish*, 441 U.S. at 559.”

In *Reynolds*, the police arrived at a juvenile detention facility following a report that some of the girls were “acting strangely” and “might be under the influence of drugs and might have drugs in their possession.” *Reynolds, supra*, \_\_\_ F3d at \_\_\_. The officers conducted a search of the girls’ rooms and found items that the officers “believed to be associated with drug use.” *Reynolds, supra*, \_\_\_ F3d at \_\_\_. One of the juvenile girls, Reynolds, insinuated to the staff members and the officers that she might have drugs hidden in her undergarments. Based upon the officers’ findings and Reynold’s insinuation, a female officer conducted a strip search of Reynolds. In determining that this search did not violate Reynolds’ Fourth Amendment rights, the Court stated:

“Applying this balancing approach, we conclude that Officer Watson’s strip search of Reynolds was not unreasonable. In so concluding, we apply *Wolfish*’s admonition to ‘consider the scope of the particular intrusion, the manner in which it [was] conducted, the justification for initiating it, and the place in which it [was]

conducted.’ *Id. Wolfish* also pointed out that a ‘detention facility is a unique place fraught with serious security dangers. Smuggling of money, drugs, weapons, and other contraband is all too common an occurrence.’ *Id.* The Bellewood Home also was ‘a unique place fraught with’ a variety of problems and dangers, including the use of drugs by its residents. . . .

\* \* \*

“Although the strip search was a highly invasive procedure, it was no more invasive than necessary to accomplish its purpose of insuring that Reynolds and the other girls were not concealing drugs on their persons. It was conducted in a way designed to minimize its intrusive effect. Officer Watson made the search in the privacy of the girls’ own rooms and in the presence of only a single staff member. She did not touch any of the girls during the search. Considering all the circumstances, we conclude that Officer Watson’s strip search of Reynolds was not unreasonable.” *Reynolds, supra*, \_\_\_ F3d at \_\_\_.

The Court also indicated that balancing the need for the particular search against the invasions of personal rights that the search entails is not dependent on the identity of the person conducting the search. The Court indicated that this same strip search would have been reasonable if it had been conducted by the staff of the juvenile detention center. The Court stated:

“We see no valid reason why the result should be different because it was a police officer who conducted the search. In either instance, the purpose and objective of the search was the same: to help the [juvenile detention center] determine whether the girls possessed drugs, and thus to aid the [juvenile detention center] in uncovering what the facts suggested may have been the illegal use of drugs by some of the residents.” *Reynolds, supra*, \_\_\_ F3d at \_\_\_.

## Update: Juvenile Justice Benchbook (Revised Edition)

### CHAPTER 7

#### Pretrial Proceedings in Delinquency Cases

##### 7.4 Identification Procedures

###### C. Constitutional Requirements

###### Right to counsel.

Near the top of page 143, replace the first full sentence on this page with the following text:

A defendant's right to counsel at corporeal identifications attaches at the time adversarial judicial criminal proceedings are initiated against that defendant. *People v Hickman*, \_\_\_ Mich \_\_\_, \_\_\_ (2004). In *Hickman*, the challenged identification took place "on-the-scene" and before the initiation of adversarial proceedings; therefore, counsel was not required. The Michigan Supreme Court's decision in *Hickman* overruled the Court's previous decision in *People v Anderson*, 389 Mich 155 (1973), where "the right to counsel was extended to all pretrial corporeal identifications, including those occurring before the initiation of adversarial proceedings." *Hickman, supra*, \_\_\_ Mich at \_\_\_. The *Hickman* Court acknowledged that the *Anderson* rule represented the "policy preferences" of that Court but that the rule lacked any foundational basis in state or federal constitutional provision. Both the federal and state constitutional provisions on which a criminal defendant's right to counsel are based are prefaced by the phrase, "In all criminal prosecutions, . . . ." Said the *Hickman* Court:

"[I]t is now beyond question that, for federal Sixth Amendment purposes, the right to counsel attaches only at or after the initiation of adversarial judicial proceedings.

This conclusion is also consistent with our state constitutional provision, Const 1963, art 1, § 20[.]" *Hickman, supra*, \_\_\_ Mich at \_\_\_.



The Court added that “identifications conducted before the initiation of adversarial judicial criminal proceedings could still be challenged” on the basis that a defendant’s due process rights were violated by the identification’s undue suggestiveness or by other factors unfairly prejudicial to the defendant.

## CHAPTER 7

### Pretrial Proceedings in Delinquency Cases

#### 7.6 Selected Search and Seizure Issues

##### **Application of constitutional protections to minors.**

Near the bottom of page 154, insert the following text immediately before the boldface text reading “**Burden of proof**”:

In *People v Goldston*, \_\_\_ Mich \_\_\_, \_\_\_ (2004), the Michigan Supreme Court adopted the good-faith exception to the exclusionary rule established in *United States v Leon*, 468 US 897 (1984). The good-faith exception provides that if the police’s good-faith reliance on a search warrant is objectively reasonable, the exclusionary rule will not bar the admission of the evidence even if the warrant is later found to be invalid.

## CHAPTER 10

### Juvenile Dispositions

#### 10.12 Restitution

##### I. Calculating Restitution Where the Offense Results in Physical or Psychological Injury, Serious Bodily Impairment, or Death

###### Triple restitution for serious bodily impairment or death of a victim.

At the top of page 244, delete the first two paragraphs and the July 2003 update (discussing *Kreiner v Fischer*) and insert the following text:

According to the Michigan Court of Appeals in *People v Thomas*, \_\_\_ Mich App \_\_\_, \_\_\_ (2004), the phrase “serious impairment of a body function” as it is defined in the no-fault act, MCL 500.3135(1), is not relevant to a court’s analysis of an injury resulting from a defendant’s violation of MCL 750.81d(3)—resisting arrest and causing the police officer serious bodily impairment. The no-fault act’s definition of the phrase and case law based on that interpretation are not applicable to circumstances like those in *Thomas* because MCL 750.81d(7)(c) expressly provides that “serious impairment of a body function” is to be defined as the phrase is defined in MCL 257.58c. *Thomas, supra*, \_\_\_ Mich App at \_\_\_.

The definition of “serious impairment of a body function” in MCL 257.58c is substantially similar to the definitions of this term in the provisions of the CVRA authorizing triple restitution for victims who sustain a serious bodily impairment as a result of an offender’s criminal conduct. See MCL 780.766(5), 780.794(5), and 780.826(5). In *Thomas*, the Court of Appeals rejected both parties’ assertion that the no-fault statute should be considered “in pari materia” with the definition in MCL 257.58c. The *Thomas* Court explained that the doctrine of “in pari materia” was inapplicable because

“[t]he two statutes [MCL 257.58c and 500.3135(1)] do not relate to the same subject or share a common purpose. The no-fault act provides a system of civil compensation and liability for automobile accidents; the statute at issue [in *Thomas*] prohibits and criminalizes assaultive behavior while resisting an arrest.” *Thomas, supra*, \_\_\_ Mich App at \_\_\_.

The Court also noted that a court may not look outside the statute at issue when, as in *Thomas*, the definitions of terms relevant to the dispute are provided in the statute itself. Thus, in *Thomas*, it was improper to consider the no-fault act’s definition of “serious impairment of a body function” because MCL 750.81d(7) provided the definition of the phrase by direct reference to MCL 257.58c. Similarly, the statutory provisions governing triple restitution in cases involving serious bodily impairment under the CVRA contain a

definition of the phrase so that reference to the no-fault act's definition is improper.

Because the definition of "serious bodily impairment" used in MCL 750.81d(7)—the phrase as defined in MCL 257.58c—is substantially similar to the definitions used throughout the CVRA, the *Thomas* Court's disposition of the issue is relevant to cases under the CVRA involving the interpretation of "serious bodily impairment." The CVRA's definitions of the phrase are prefaced with "serious impairment of a body function includes, but is not limited to" the specific list of injuries included in the definitions. According to the *Thomas* Court:

"[T]o determine whether injuries to the officer here constitute serious impairments of a body function under the statute, we consider their similarity to injuries within the statutory list."  
*Thomas, supra*, \_\_\_ Mich App at \_\_\_.

The same analysis applies to a determination of serious bodily impairment under the triple restitution provisions of the CVRA.

## CHAPTER 23

### Selected Issues Regarding Imposition of Adult Sentence

#### 23.4 Alternative Sentences for Major Controlled Substance Offenses

Near the bottom of page 475, immediately before the last paragraph insert the following text:

\*2002 PA 665 became effective March 1, 2003.

The ameliorative effects of 2002 PA 665's amendment to MCL 333.7401(3) do not apply retroactively\* where the amendments did not simply reduce the penalties possible for conduct identical under both the amended and preamended versions. *People v Doxey*, \_\_\_ Mich App \_\_\_, \_\_\_ (2004). As amended, MCL 333.7401(3) does not proscribe the same conduct as the preamended version; rather, 2002 PA 665 altered the quantities of controlled substances involved in each statutory provision so that "new" crimes of delivery were created at the same time that mandatory consecutive sentences were eliminated in specific situations. *Doxey, supra* at \_\_\_.

## Update: Juvenile Justice Benchbook (Revised Edition)

### CHAPTER 6

#### Notice and Time Requirements in Delinquency Proceedings

##### 6.5 Issuance and Service of Summons

###### B. Manner of Service of Summons

Near the middle of page 121, insert the following paragraph immediately before subsection (C):

In *In re Zaherniak*, \_\_\_ Mich App \_\_\_, \_\_\_ (2004), the Court of Appeals discussed an apparent conflict between MCR 3.920 and MCL 712A.13. MCR 3.920(B)(4)(b) provides that the court may find “on the basis of testimony or a motion and affidavit” that personal service cannot be made, and the court may then order substitute service. MCL 712A.13 also provides for substitute service; however, MCL 712A.13 does not require the court to make its findings based upon testimony or an affidavit. In *Zaherniak*, the petitioner was unable to personally serve the respondent with notice of the hearing on termination of parental rights. At a hearing in the respondent’s absence, the trial court suggested that the petitioner file an affidavit of diligent effort, and the court would order service by publication. The petitioner filed a motion for alternate service without a proper affidavit. The court did not take any testimony regarding the motion before issuing its order for service by publication. After publication, termination proceedings were held and the respondent’s parental rights were terminated. The respondent appealed, claiming that the court improperly allowed service by publication and therefore lacked jurisdiction over her. The respondent argued that the petitioner’s motion was defective because it failed to specify facts to support an order for substitute service.

The Court of Appeals held that MCL 712A.13, not MCR 3.920, controls the determination of whether a court has established jurisdiction over a respondent:

“We believe that MCL 712A.13 reflects our Legislature’s policy considerations concerning the necessary requirements for obtaining jurisdiction over a parent or guardian of a juvenile. Because the issue of service is a jurisdictional one, the statutory provision governs. The plain language of the statute contains no specific requirements concerning what types of evidence a court must consider in determining whether substitute service is indicated, or the form in which the evidence must be received. By its silence, MCL 712A.13 permits a court to evaluate evidence other than testimony or a motion and affidavit when determining whether notice can be made by substituted service. We believe that the recently amended court rule requirements now found in MCR 3.920(B)(4)(b) are restrictions affecting jurisdiction in matters that are usually time-sensitive and for which the Legislature’s policy is to seek prompt resolution for the sake of the juvenile involved, and as such conflict with MCL 712A.13. Therefore, the statute prevails.”

The Court of Appeals concluded that the trial court did not err in relying upon the petitioner’s motion for alternate service and documents in the court file regarding previous failures to serve the respondent.

## CHAPTER 11

### Paying the Costs of Juvenile Proceedings

#### 11.2 Orders for Reimbursement of the Costs of Care or Services When a Juvenile Is Placed Outside the Home

Insert the following text after the last paragraph on the bottom of page 270:

A stepfather does not qualify as a “custodian” for the purposes of ordering reimbursement pursuant to MCL 712A.18(2). In *In re Hudson*, \_\_\_ Mich App \_\_\_, \_\_\_ (2004), a stepfather was ordered to pay the cost of his stepdaughter’s care and legal representation. The Probate Code does not define “custodian.” However, the Court of Appeals noted that “custodian” has a specific legal meaning as provided in the Michigan Uniform Transfer to Minors Act, MCL 554.521 et seq. Under that act, “one does not become a ‘custodian’ without acquiring, under clearly articulated circumstances, legal possession of a minor’s property which is then held in trust for the child.” *Hudson, supra* at \_\_\_. The Court concluded that because the stepfather was not a financial ‘custodian’ as specifically defined in the Michigan Uniform Transfer to Minors Act, he could not be ordered to reimburse the court for the juvenile’s cost of care or out-of-home placement.



# June 2004

## Update: Juvenile Justice Benchbook (Revised Edition)

### CHAPTER 7

#### Pretrial Proceedings in Delinquency Cases

##### 7.8 Evaluating a Juvenile's Competence

Please delete the first paragraph of the May 2004 update to page 164 that indicates that *In re Blackshear* is an unpublished opinion and is therefore not binding under the rule of stare decisis. On May 18, 2004, *Blackshear* was approved for publication. *In re Blackshear*, \_\_\_ Mich App \_\_\_ (2004).

## CHAPTER 10

### Juvenile Dispositions

#### 10.9 Dispositional Options Available to Court

##### K. State Minimum Costs

Effective May 13, 2004, 2004 PA 102 amended MCL 712A.18m to require a court to order minimum state costs only if the court also orders the juvenile to pay other fines, costs, restitution, assessments or other payments. In the October 2003 update to page 226, replace the quoted paragraph (1) with the following quote:

“(1) If a juvenile is within the court’s jurisdiction under section 2(a)(1) of this chapter, and is ordered to pay any combination of fines, costs, restitution, assessments, or payments arising out of the same juvenile proceeding, the court shall order the juvenile to pay costs of not less than the following amount, as applicable:”

## 10.9 Dispositional Options Available to Court

### K. State Minimum Costs

In the October 2003 update to page 228, insert the following text following the quotation of MCL 771.3(7)(a)-(b):

A juvenile who has been ordered to pay state minimum costs\* as a condition of probation or supervision and who is not in willful default of the payment may petition the court at any time for a remission of the payment of any unpaid portion of the state minimum costs. MCL 712A.18(19). The court may remit all or part of the amount of the state minimum cost due or modify the method of payment if the court determines that payment of the amount due will impose a “manifest hardship on the juvenile or his or her immediate family.” *Id.*

\*State minimum costs ordered pursuant to MCL 712A.18m. See the October 2003 update for more information on state minimum costs.

## CHAPTER 25

### Recordkeeping & Reporting Requirements

#### 25.20 Required Communicable Disease Testing

##### A. Mandatory Testing or Examination of Juveniles Bound Over for Trial in the Criminal Division

Effective May 13, 2004, 2004 PA 98 amended MCL 333.5129 to require testing for hepatitis C infection. On page 549, replace the first paragraph with the following text:

If a defendant is bound over to the Criminal Division for a violation of any of several enumerated offenses, and if the district court determines there is reason to believe the violation involved sexual penetration or exposure to the body fluid of the defendant, the district court must order the defendant to be examined or tested for venereal disease, hepatitis B infection, hepatitis C infection, and for the presence of HIV or an HIV antibody. MCL 333.5129(3).

##### B. Mandatory Testing or Examination Following Juvenile Adjudication or Conviction

On page 550, replace the first paragraph in this subsection with the following text:

MCL 333.5129(4) states that upon conviction of a defendant or the issuance by the Family Division of an order adjudicating a child to be within the provisions of MCL 712A.2(a)(1) for a violation of any of the following offenses, the court having jurisdiction of the criminal prosecution or juvenile hearing must order the defendant or child to be examined or tested for venereal disease, hepatitis B infection, and hepatitis C infection, and for the presence of HIV or an HIV antibody.

## 25.20 Required Communicable Disease Testing

### E. Ordering Payment of the Costs of Examination and Testing

Effective May 13, 2004, 2004 PA 98 amended MCL 333.5129 to allow a court to order a juvenile to pay the costs of communicable disease testing. On page 552, insert the following new subsection:

Upon conviction or juvenile adjudication, the court may order an individual who is examined or tested under MCL 333.5129 to “pay the actual and reasonable costs of that examination or test incurred by the licensed physician or local health department that administered the examination or test.” MCL 333.5129(10). MCL 333.5129(11) states:

“An individual who is ordered to pay the costs of an examination or test under [MCL 333.5129(10)] shall pay those costs within 30 days after the order is issued or as otherwise provided by the court. The amount ordered to be paid under [MCL 333.5129(10)] shall be paid to the clerk of the court, who shall transmit the appropriate amount to the physician or local health department named in the order. If an individual is ordered to pay a combination of fines, costs, restitution, assessments, probation or parole supervision fees, or other payments upon conviction in addition to the costs ordered under [MCL 333.5129(10)], the payments shall be allocated as provided under the probate code of 1939, 1939 PA 288, MCL 710.21 to 712A.32, the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69, and the crime victim’s rights act, 1985 PA 87, MCL 780.751 to 780.834. An individual who fails to pay the costs within the 30-day period or as otherwise ordered by the court is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.”

## Update: Juvenile Justice Benchbook (Revised Edition)

### CHAPTER 7

#### Pretrial Proceedings in Delinquency Cases

##### 7.8 Evaluating a Juvenile's Competence

Insert the following text on page 164 before Section 7.9:

An unpublished opinion of the Michigan Court of Appeals is not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1). The following unpublished case is provided to assist the bench in an area without published case law.

**Judicial Admission of a Mentally Retarded Juvenile.** In an unpublished opinion, the Court of Appeals held that the Mental Health Code prohibits judicial admission to a mental health care facility of a mentally retarded juvenile who was determined incompetent to stand trial and whose condition will not improve. In *In re Blackshear*, unpublished opinion per curiam of the Court of Appeals, decided March 30, 2004 (Docket No. 240556, 240665, and 240666), the trial court committed a juvenile who was deemed incompetent to stand trial on the basis of his mental retardation to a Community Mental Health Agency for care, treatment, and supervision. Noting that the Mental Health Code is silent regarding judicial admission of a mentally retarded juvenile who has been found incompetent and whose condition will not improve within 15 months, the trial court followed *In re Carey*, 241 Mich App 222 (2000), by construing the provisions of the Mental Health Code to protect the juvenile's rights. The trial court used MCL 330.2031 as guidance. MCL 330.2031 provides that if a defendant is deemed incompetent to stand trial and the court determines that he or she is unlikely to attain competence with 15 months, the court may direct the prosecuting attorney to file a petition alleging that the defendant is a person requiring treatment as defined by MCL 330.1401 (governing mental illness) or meets the criteria for judicial admission as defined by MCL 330.1515 (governing mental retardation). Pursuant to MCL 330.1515, the trial court judicially admitted the juvenile to a mental health care facility. The Court of Appeals reversed the order because the express language in MCL 330.1515 provides for court admissions of individuals *18 years of age or older*. MCL 330.1503(1) also expressly

prohibits the court from judicially admitting an individual under the age of 18. The Court of Appeals concluded that “the trial court in this case was not allowed to disregard the clear directives of the act and judicially admit the juvenile to mental health care.”

## CHAPTER 20

### **“Automatic Waiver” Proceedings— Arraignments & Preliminary Examinations**

#### **20.2 “Automatic Waiver” of Family Division Jurisdiction**

Near the top of page 432 after the first four bullets, insert the following bullets:

- a lesser-included offense of any of the above-enumerated offenses if the juvenile is charged with an above-enumerated offense, MCL 712A.2(a)(1)(H), MCL 600.606(2)(h), and MCL 764.1f(2)(h);
- any other violation arising out of the same transaction as any of the above-enumerated offenses if the juvenile is charged with an above-enumerated offense, MCL 712A.2(a)(1)(I), MCL 600.606(2)(i), and MCL 764.1f(2)(i).



# April 2004

## Update: Juvenile Justice Benchbook (Revised Edition)

### CHAPTER 25

#### Recordkeeping & Reporting Requirements

##### 25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

###### L. Pertinent Case Law Challenging Registration Act

On page 539, immediately before the paragraph beginning “**Due process under Michigan Constitution**,” insert the following text:

**Due process under U.S. Constitution.** In *Fullmer v Michigan Dep’t of State Police*, \_\_\_ F3d \_\_\_, \_\_\_ (CA 6, 2004), the Court held that the public registry provisions of Michigan’s Sex Offenders Registration Act do not violate the procedural due process standards for sex offender registries that were set forth in *Connecticut Dep’t of Public Safety v Doe*, 538 US 1 (2003).\*

\*See the May 2003 update for a detailed discussion of *Connecticut Dep’t of Public Safety v Doe*.

## Update: Juvenile Justice Benchbook (Revised Edition)

### CHAPTER 17

#### Designated Case Proceedings—Arraignments, Designation Hearings, and Preliminary Examinations

##### 17.9 Scheduling of Preliminary Examination or Designation Hearing

Replace the second sentence of Section 17.9, page 399, with the following:

If the petition alleges an offense other than a specified juvenile violation and is authorized for filing, the court must schedule a designation hearing within 14 days. MCR 3.951(B)(2)(c)(ii). Administrative Order 1998-50, effective December 17, 2003, amended MCR 3.951(B)(2)(c)(ii) by eliminating the requirement to schedule the designation hearing “before a judge other than the judge who would conduct the trial.” A referee may conduct designation hearings.

\*For more information on a referee’s ability to conduct designation hearings, see Section 17.10(A).